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RIGHT OF A TAX PAYER TO ENJOIN STATE OFFICERS FROM AN ILLEGAL DISBURSEMENT OF THE PUBLIC FUNDS.—It is a general theory that courts are not inclined to exercise supervision or control over state officers by injunction. This in large measure flows from the fundamental constitutional principle that the executive department is equal in rank and co-ordinate with the judicial department.[1] Whether a private citizen and taxpayer showing no special interest may obtain an injunction to restrain the fiscal officer of a state from an illegal disbursement of public moneys is a subject on which there appears to be a dearth of authority. The few cases in point are conflicting; but the majority view seems to deny the relief.[2] Lack of legal capacity in the plaintiff to sue is assigned as a reason for refusing injunction in such cases.[3] The interest of the taxpayer in the subject matter of the suit is compared to that of a private individual suing to abate a public nuisance without showing the requisite special injury.[4] Another ground for refusing to grant the relief is that the suit is in effect one against the state which can not be sued without its consent.[5] Although the suit is

[1] See Frost *v.* Thomas, 26 Col. 222, 56 Pac. 899.
[2] Jones *v.* Reed, 3 Wash. St. 57, 27 Pac. 1067; Butler *v.* Ellerbe, 44 S. C. 256, 22 S. E. 425; Sutton *v.* Buie, 136 La. 234, 66 South. 956, L. R. A. 1915D, 178. *Contra,* Burke *v.* Snively, 208 Ill. 328, 70 N. E. 327.
[3] See Jones *v.* Reed, *supra;* Sutton *v.* Buie, *supra.*
[4] See Jones *v.* Reed, *supra.*
[5] See Butler *v.* Ellerbe, *supra.*

against the officer in his official capacity no liability is sought to be fixed upon the state, and no relief against the state is asked.[6] Hence it would hardly seem that the suit is in substance one against the state; neither is it such in form.

By the weight of authority a resident taxpayer may enjoin an officer of a municipal corporation from an illegal disbursement of public funds.[7] While this doctrine has been admitted by those courts which deny such a right against state officers, they distinguish the two cases. It is said that one of the grounds for allowing such equitable relief against a municipal officer is the analogy drawn from the relation which stockholders in a private corporation bear to the corporation as regards their equitable relief. Just as shareholders of private corporations are given a remedy in equity in case of the misuse of the corporate funds, so are the tax payers of a municipality.[8] A case which involves a state officer is distinguished from one involving a municipal officer on the ground that since the state is in no sense a municipal corporation but the sovereign power, the analogy to a private corporation is not applicable.[9] That this analogy does not apply in the case of a state officer is apparent; but this analogy is hardly the sole reason for granting the relief against a municipal officer. The reason behind this reason, the equitable interest of the taxpayer in the funds of the corporation, would seem to be the underlying basis for granting injunctive relief.[10] Upon

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[6] See Burke *v.* Snively, *supra.* The court said on this question: "The bill is not a suit against the state. It did not implead or ask any relief against the state. The relief asked is that officials of the state charged by law with the performance of official duties be restrained from a misuse of the moneys trusted to them, and from applying such moneys to purposes not warranted by law."

[7] See 4 Dill. Mun. Corp. (5th ed.), § 1579; Crampton *v.* Zabriskie, 101 U. S. 601.

[8] See 4 Dill. Mun. Corp. (5th ed.), § 1780.

[9] See Jones *v.* Reed, *supra;* Sutton *v.* Buie, *supra.* In the latter case, speaking of the doctrine as applied to municipal corporations, the court said: "As applied to municipal corporations, it is founded in part upon the corporate relation supposed to exist, or in reality existing between the inhabitants of the municipality and the municipality. The inhabitants are likened to the shareholders of a private corporation and the municipality is likened to their trustee. See Dill. Mun. Corp. (3rd ed.), § 914.

"This foundation for the doctrine needless to say does not exist in the case of a suit involving state affairs. By no possibility can the state in her relations with her citizens be likened to a private corporation. Between the state and a private corporation there is in that connection no analogy whatever."

[10] See Jones *v.* O'Connel, 266 Ill. 443, 107 N. E. 731, 732. The court said: "If taxpayers have a right or interest which the bill in this case was intended to protect it is of a purely equitable nature; the legal right and title being in the state. * * * This court has always recognized that rule, and has uniformly held that the taxpayers are in equity the owners of the property of a municipality, and whenever public officials threaten to pay out public funds for a purpose unauthorized by law, or misappropriate such funds, equity will assume jurisdiction to prevent the unauthorized act or to redress the wrong; and this is because the right and interest are equitable in their nature and are not recognized by courts of law."

this apparently true ground for allowing taxpayers to bring these suits, the demand for relief, should be heard as readily in the case of state officers as in that of municipal officers; the equitable interest of the taxpayer in the state funds may differ in degree from his interest in funds of the municipal corporation of which he is an inhabitant but the two interests do not differ in kind.[11] This equitable interest in the state funds has been recognized, and an injunction to restrain an illegal appropriation granted on that ground at the suit of a taxpayer.[12] In the late case of *Fergus* v. *Russell,* (Ill.), 110 N. E. 130, such was the basis for allowing a taxpayer to bring such a suit. In that case the state legislature had passed a bill making appropriations for the salaries of various state officers. The bill contained other appropriations which rendered it invalid under the Illinois constitution. The plaintiff as a taxpayer sued to enjoin the state treasurer from making illegal disbursements under the bill. The relief was granted, the court declaring that the taxpayer's equitable interest in the funds in the state treasury gave him a right to sue.

But despite his equitable interest there appears to be at least two forcible reasons against granting this injunctive relief at the instance of a mere taxpayer. One is the multiplicity of suits which would result if the relief were granted; the other is, that there is thus placed in the hands of a single citizen the power to seriously hamper the operation of an essential unit of the government. The embarrassment caused by a multiplicity of suits led to the rule denying equitable relief at the suit of a private individual seeking without showing special injury, to abate a public nuisance. The same considerations would seem to apply here. In regard to the probability of needlessly fettering the executive department of the gov-

[11] In Jones *v.* Reed, 3 Wash. St. 57, 27 Pac. 1067, 1070, Hoyt, J., dissenting, said: "If it is conceded that a taxpayer of a county, simply as such has a right to appeal to the courts to prevent such action by county officials as will lead to the illegal disposition of the property or funds of the county (and such I understand to be the position of the majority of the court), I can see no reason why a taxpayer of a state as such can not invoke the aid of the court to prevent like illegal action on the part of state officers. It is true he is one degree further removed from the threatened injury, but I can not see that such fact can affect the principle involved. The taxpayer of the county may apply for relief, not because he is to be affected by the proposed illegal action in a different manner from every other taxpayer in the county, but simply because as such taxpayer, he is interested in the property or funds of the county that he may ask the court to protect the same from illegal disposition. The taxpayer of the state bears exactly the same relation, excepting in degree, to the property or funds of the state, as does the taxpayer of the county to its funds or property; and to hold that in one case the courts are open to the taxpayer, and the other not, seems to me inconsistent, and contrary to the course of courts dealing with matters of this kind. It is the pecuniary interest of the taxpayer that gives him the right to appeal to the courts, and not the grade or character of the officer whose illegal action he seeks to prevent."

[12] Burke *v.* Snively, *supra.*

ernment, the evils attendant upon such condition would, standing alone, present a weighty argument against granting the relief at the suit of a single taxpayer. Obviously the enjoining of the fiscal officer of a state stands upon an entirely different footing from granting the same remedy against the like officer of a municipal corporation. In the latter case the injunction operates only in the municipality, a comparatively small area of the state; whatever harm it might work there it would not act upon the entire state. But the enjoining of the state officials would affect the whole state and its inhabitants. It would be within the power of a private citizen to paralyze an important arm of the state government. Needless to say the exercise of this power might in some cases be attended with disastrous consequences. Thus under the doctrine which grants relief, there would be vested in the individual more power than would seem wise to permit.

JUSTIFICATION IN CASES INVOLVING INTERFERENCE WITH TRADE OR CALLING.—The right to carry on a lawful business or to exercise a legitimate calling without unlawful interference is universally recognized. Modern developments of the law sustain the proposition that intentional interference with another's business or occupation is actionable if no justification is established.[1] The theory of justification in such cases consists in compromise between conflicting rights by estimating in the light of public policy and social advantage the limits within which the rights of one person may be restricted in order to allow another to exercise an opposing interest.[2] It is plain from its indefinite nature that no statement of what constitutes justification applicable to all cases may accurately be proposed. In general to justify an intentional injury to a lawful trade it must appear that the act complained of was otherwise lawful, that the means employed were not illegal, and that the object sought tended to the advancement and interest of the doer.[3] Interference with contract relations in general is actionable.[4] It is necessary that the wrong-doer have knowledge of the existence of

[1] Huskie *v.* Griffin, 75 N. H. 345, 74 Atl. 595, 27 L. R. A. (N. S.) 966; Willner *v.* Silverman, 109 Md. 341, 71 Atl. 962; Wesley *v.* Native Lumber Co., 97 Miss. 814, 53 South. 346. But see Pollock, Torts, 8th ed., p. 346.

[2] In 28 Law Quart. Rev. 67, it is said: "The theory of justification consists in a proper adjustment and compromise between the two competing rights that are equally protected in law. It has been already observed that the enjoyment by a particular individual of the right of freedom, as to how he should bestow his capital and labor, is not absolute, but qualified by the existence of equal rights in the other members, to such an extent, as to be made compatible with an equally free enjoyment of these rights by the rest of the community. In fact, every case of justification reduces itself to the question, how far the rights of an individual can be so circumscribed in accordance with a general law of freedom, as to leave an equal scope for the free enjoyment of the competing rights of his fellow men."

[3] Hutton *v.* Watters (Tenn.), 179 S. W. 134 (principal case).

[4] Wheeler-Stenzel Co. *v.* American Window Glass Co., 202 Mass. 471, 89 N. E. 28.